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No. 81-523

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

CONTAINER CORPORATION OF AMERICA,

Appellant,

v.

FRANCHISE TAX BOARD,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF CALIFORNIA

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

and

BRIEF AS AMICI CURIAE IN SUPPORT OF APPELLANT'S JURISDICTIONAL STATEMENT

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Canadian Imperial Bank of Commerce, Hiram Walker Resources Limited, Inco Limited, MacMillan Bloedel Limited, Northern Telecom Limited, and Wawanesa Mutual Insurance Company hereby respectfully move for leave to file their brief as *amici curiae*. Consent of the attorney for the Appellant has been obtained. Consent of the attorney for the Appellee has been denied.

Your *amici* are incorporated under the laws of Canada, and conduct extensive business operations, either directly or through subsidiary corporations, in Canada, in other countries, and in the State of California.

In 1980, your *amici* had gross assets of approximately 69 billion Canadian dollars and total revenues of approximately 17 billion Canadian dollars. Your *amici* control aproximately 270 significant subsidiaries throughout the world.

Each *amicus* is a substantial representative of the industry in which it operates. Canadian Imperial Bank of Commerce is the second largest bank in Canada. Hiram Walker Resources Limited is the second largest Canadian distillery and a producer and distributor of natural gas and petroleum. Inco Limited is the free world's largest producer of nickel. MacMillan Bloedel Limited is the largest forest products company in Canada. Northern Telecom Limited is the largest telecommunications equipment supplier in Canada, and the second largest in North America. Wawanesa Mutual Insurance Company is the tenth largest casualty insurance company in Canada.

The California unitary tax has world-wide trade and investment ramifications, including adverse effects on your *amici*. The issues presented are critical to every foreign corporation doing business either in California or in any other state that applies a similar unitary method of apportionment of income derived from foreign commerce. That method of apportionment conflicts with uniform Federal policy governing the allocation of income between the United States and foreign countries. The international political, trade, and commercial consequences attendant upon California's *international* application of the unitary method of apportionment require this Court's examination of the extent to which Federal powers, Federal law, and international treaties and customs constitutionally preclude California from using its method of apportionment in a global context which conflicts with Federal policy.

In supporting the Appellant, your *amici* request that this Court restore the supremacy and uniform voice of the Federal government in the conduct of foreign relations and thereby effect an improvement in the international investment climate and minimize possible retaliatory trade actions.

Under the United States Constitution, your *amici*, other international enterprises, and sovereign nations cannot resolve their income apportionment disputes with California or with any other state either by treaty or by litigation in an international forum. Only a Federal solution is Constitutional.

Your *amici* therefore respectfully request permission to present to this Court their perspective as international companies whose substantial investment in, and trade with, the United States is particularly vulnerable to action by individual states, which action results in double taxation and impedes the free flow of international investment and trade.

Respectfully submitted,

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QUESTIONS PRESENTED

Whether allocation of income for tax purposes between the United States and foreign nations has been pre-empted by the Federal government so that the international application of the California formula violates the Supremacy Clause;

Whether application of the California formula internationally interferes with accepted international and Federal practice, thus preventing a uniform Federal policy in the area of international taxation of income, disrupting foreign trade relations, and thereby violating the Commerce Clause; and

Whether application of the California formula to income derived by a foreign-controlled unitary group produces a substantial risk of international multiple taxation in violation of both the Commerce Clause and the Due Process Clause.

INTEREST OF THE *AMICI CURIAE*

Your *amici* are among the largest corporations in the world and are leading companies in their own industries and in Canada. All conduct the major part of their business activities outside the United States, but have significant business interests in the United States, usually through American subsidiaries. All are California taxpayers.

Foreign multi-national corporations wishing to do business in the United States face greater problems with the international application of California's unitary method of apportionment than do domestic corporations.

The interest of your *amici* in this case arises from the arbitrary results of the international application of California's unitary method of apportionment. This method includes in the apportionment formula the sales, property, and payroll of a foreign parent company, as well as most, if not all, of its foreign subsidiaries, none of which conducts business in California. The result in many instances is that California imposes its income tax on an apportioned amount of income far in excess of the actual economic gain derived in California, and, in some instances, in excess of the actual economic gain derived from all business conducted in the United States.

A decision to note probable jurisdiction would permit this Court to review the merits of the Constitutional issues and to prohibit the application of California's unitary method of income allocation internationally where it contradicts a clearly defined Federal policy to employ the "arm's length—independent entity" method in allocating income between the United States and foreign

nations. Such a result would limit the imposition of California income tax to a properly apportioned amount of income actually derived within the United States by your *amici*.

SUMMARY OF THE ARGUMENT

In exercising its exclusive control of foreign commerce, the Federal government has created an extensive network of international agreements that pre-empt state regulation of income allocation among nations. The Federal regulatory framework, expressed in over 40 income tax treaties with governments around the world, creates a comprehensive and coherent Federal policy of income allocation on an "arm's length—independent entity" basis that entirely pre-empts state apportionment of income between the United States and foreign nations on any inconsistent basis. The instant case thus also presents an important issue of Federal pre-emption under the Supremacy Clause of the Constitution.

California's unitary income apportionment scheme applied to foreign corporations constitutes state regulation of foreign commerce, in violation of the Constitution's exclusive grant of such authority to the Federal government. In regulating foreign commerce, California jeopardizes the ability of the Federal government to define and implement United States trade policy and interferes with the conduct of international relations. Such state regulation violates an exclusive Constitutional grant of power to regulate foreign commerce and ignores the justifications of that grant, articulated in this Court's

recent opinion in *Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979).

Additionally, the California system of apportioning income internationally abridges the Due Process Clause of the Constitution through arbitrary and substantial misallocation and double taxation of income.

The instant case presents, in a heretofore unconsidered international context, the unconstitutionality of such arbitrary misallocations as burdens on international commerce under the Commerce Clause, and a denial of due process.

Constitutionally, your *amici* and their government must rely upon Federal definitions of United States trade policy. The global application of the California system demonstrates state action compromising United States foreign relations. Your *amici* respectfully urge this Court to note probable jurisdiction and to reaffirm the Constitutional allocation of power to the Federal government, and to redress the unconstitutional effects of state regulation.

ARGUMENT

I.

PERVASIVE FEDERAL CONTROL OF ALLOCATION OF TAXABLE INCOME BETWEEN THE UNITED STATES AND FOREIGN NATIONS PRE-EMPTS STATE REGULATION OF INTERNATIONAL ALLOCATION OF TAXABLE INCOME.

Under the Supremacy Clause, Federal pre-emption of state regulation results from either a prevalent need for uniform Federal regulation or the existence of a pervasive scheme of Federal controls. Both criteria are met in the regulation of international allocation of taxable income and require this Court's review of California regulation of a federally pre-empted field.

When finding pre-emption as a result of a pervasive scheme of Federal controls, this Court has never required a direct conflict between express language of state and Federal regulations. *Campbell v. Hussey*, 368 U.S. 297 (1961). Particularly in foreign relations and other areas of exclusively Federal competence, Federal action can entirely pre-empt even those state regulations that appear on their face to be consistent with Federal action. *Hines v. Davidowitz*, 312 U.S. 52 (1941)

The United States maintains a pervasive scheme for the international allocation of income for tax purposes. The United States has entered into income tax treaties with approximately 40 foreign nations. These treaties create a detailed and sophisticated set of rules designed to allocate income between the United States and each treaty nation. Tax issues covered by the treaties include the circumstances under which an enterprise of one country becomes subject to taxation in another, agreed exemption of certain kinds of income from taxation,

allocation of income among related enterprises, and arrangements to prevent double taxation of the same income.

Income tax treaties are negotiated to avoid and resolve conflicts as to which nation shall tax income. Such treaties necessarily include rules allocating taxable income. These income tax treaties of the United States establish a uniform Federal policy under which taxable income is allocated between the United States and foreign countries according to the "arm's length—independent entity" principle.

Nearly all income tax treaties contain language to the following effect:

> Where an enterprise of one of the contracting States is engaged in trade or business in the other State through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.[1]

The United States Internal Revenue Service Office of International Operations, in common with similar foreign authorities, actively implements these and other tax treaty provisions, which are closely integrated with the Internal Revenue Code of the United States.[2] The

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[1] See Article III(2) of Income Tax Treaty between the United States and Germany, as amended by December 27, 1965, protocol. 5 U.S.T. 2768, T.I.A.S. No. 3133; 16 U.S.T. 1865, T.I.A.S No. 5920.

[2] See I.R.C. § 482 and Treas. Reg. § 1.482-1(a)(1):

> The purpose of section 482 is to place a controlled taxpayer on a tax parity with an uncontrolled taxpayer,

(Footnote continued on following page)

treaties also provide for resolution of alleged double taxation by referring conflicts to the competent authorities of each contracting nation.

The need for international income tax treaties is well-illustrated by several industries. The income tax treaty between the United States and Canada recognizes the economic realities of international commerce involving the operation of ships and aircraft. Under the treaty, earnings derived from the operation of ships and aircraft in international traffic by enterprises registered in one country are exempt from tax in the other country on a reciprocal basis.[3] This provision thus allocates taxable income between the two countries according to an explicit Federal policy. *Cf. Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (recognizing Federal policy regarding the susceptibility of instrumentalities of commerce to property taxation). The need for international agreement in allocating income in other industries is equally prevalent and is recognized by the treaties. Inconsistent state regulation is incompatible with this need. As is discussed later, California's unitary method of apportionment of income is clearly inconsistent with the Federal "arm's length—independent entity" policy.

The pervasive scheme of Federal control that has traditionally led this Court to find Federal pre-emption is readily apparent in the extensive network of inter-

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[2] *continued*
by determining, according to the standard of an uncontrolled taxpayer, the true taxable income from the property and business of a controlled taxpayer.

[3] See Article VIII of the Tax Treaty between the United States and Canada dated March 4, 1942, 56 Stat. 1399, T.S. 983. The new treaty between the U.S. and Canada, now in the process of ratification, contains the same policy.

national income tax treaties. That network reveals a Federal policy to regulate, at the international level, the allocation of taxable income between the United States and any particular foreign nation, excluding inconsistent or supplementary state regulation of the same subject matter. As this Court stated in *Hines v. Davidowitz*, 312 U.S. 52, 62-63 (1941):

> When the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of aliens as such, the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute.

This Court found a uniform Federal policy in *Japan Line* after examining a far less extensive international regulatory framework than is applied to the international allocation of taxable income. Your *amici* respectfully suggest that the uniform adherence to the "arm's length—independent entity" method in more than 40 income tax treaties to which the United States has become a party reveals an even greater Federal policy of uniformity, which cannot tolerate the diverse and contradictory state regulations exemplified by the California decision.

Applying traditional pre-emption analysis, Federal pre-emption of state control of international taxable income allocation is justified by the prevalent need for a uniform international policy, as well as by the existing Federal controls. The need for a uniform policy and "speak[ing] with one voice" in international affairs has been recognized by this Court. *Michelin Tire Corporation v. Wages*, 423 U.S. 276, 289 (1976). California's unitary method of apportioning income on an international basis prevents this need from being met. This

issue of Constitutional supremacy of Federal over state regulation of international tax matters merits review by this Court.

II.

THE INTERNATIONAL APPLICATION OF CALIFORNIA'S UNITARY METHOD OF APPORTIONMENT OF TAXABLE INCOME INFRINGES UPON THE CONDUCT OF FOREIGN RELATIONS, WHICH IS AN AREA OF EXCLUSIVE FEDERAL AUTHORITY.

California regulation of taxable income allocation among nations has affected "international relations in a persistent and subtle way." *Zschernig v. Miller*, 389 U.S. 429, 440 (1968). State "regulations must give way if they impair the effective exercise of the Nation's foreign policy." *Id.*

Foreign sovereigns perceive the global application of state unitary apportionment schemes as unjustified attempts by individual states to extend their tax reach far beyond the territorial boundaries of the United States. As expressed by the Italian government, on its own behalf and on behalf of the nine EEC governments:

> Our Governments are concerned about the application to U.S. subsidiaries of foreign companies of the unitary basis of taxation as applied in California and in varying degrees by certain other States. . . . This method is *incompatible with the principles accepted by all OECD member* [countries] and recommended to all [countries] as a basis for the taxation of subsidiaries or permanent establishments of foreign enterprises. These principles require that a subsidiary should be taxed only on the profits it actually has made, provided that these are based on dealing at "arm's length" between the sub-

> sidiary and the related enterprises. (Emphasis added.)[4]

The same concerns were echoed by the British National Committee of the International Chamber of Commerce. Referring to the unitary apportionment of international income by California, the Committee's representative testified:

> Such actions by the States also *violate the treaties of friendship and commerce* which we have entered into in the United States with 25 foreign nations. This *fairly invites retaliation by foreign governments* against U.S. companies, with serious potential burdens on U.S. business overseas. (Emphasis added.)[5]

California's involvement in apportioning income internationally has significant effects on international relations. Tax policy, foreign trade, and foreign policy are all intimately related.

The British government has underscored the potential risks of continued California interference with a preexisting Federal policy that is the result of careful negotiation among the trading partners of the United States.

> Unless common rules for determining the allocation of profits between different taxing jurisdictions are followed internationally it will be impossible to preserve the essential objective of providing a consistent and coherent international tax framework

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[4] State Taxation of Foreign Source Income: Hearings on H.R. 5076 Before the House Comm. on Ways and Means, 96th Cong., 2d Sess. 360 (1980).

[5] State Taxation of Interstate Commerce and Worldwide Corporate Income: Hearings on S. 983 Before the Sub-Comm. on Taxation and Debt Management Generally of the Senate Comm. on Finance, 96th Cong., 2d Sess. 75 (1980). The same group has also concluded that the California system "creates major barriers to United Kingdom investment in the United States and to international trade between our two countries." *Id.*

> for business and investment, *for which the United States and the United Kingdom have striven together with their fellow members of the Organization for Economic Co-operation and Development.* It is the view of Her Majesty's Government that *the unitary basis,* which is not a practical international alternative to the "arm's-length" basis, *could undo the important and patient international work that has been achieved in regulating international tax practices,* and that every effort is required to discourage the use or the extension of that basis. (Emphasis added.)[6]

Consistent with the Constitution, this Court has prohibited state regulation of issues that impact upon foreign relations. "Experience has shown that international controversies of the gravest moment, sometimes even leading to war, may arise from real or imagined wrongs to another's subjects inflicted, or permitted, by a government." *Hines v. Davidowitz,* 312 U.S. 52, 64 (1941). Policies risking foreign retaliation should be pursued only upon a *Federal* evaluation of the consequences and a Federal decision to proceed. *Chy Lung v. Freeman,* 92 U.S. 550 (1876). This Court's opinion in *Japan Line, Ltd. v. County of Los Angeles,* 441 U.S. 434 (1979), reiterated the Constitutional requirement of reserving to the United States all power over issues that might precipitate dramatic retaliation by foreign sovereigns acting on behalf of their commercial constituents. State regulation that potentially impacts upon foreign relations or jeopardizes the power of the Federal government to deal comprehensively with those problems must be invalidated. *Zschernig v. Miller,* 389 U.S. 429 (1968).

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[6] Press Release by British Information Department, Hearings on H.R. 5076 Before the House Comm. on Ways and Means, 96th Cong., 2d Sess. 317 (1980).

In international relations, the political and the economic are inseparable; indeed, one is often the inducement for the other. The complicated interface of United States trade policy with foreign nations dictates exclusive Federal responsibility for diplomatically tailoring the regulation of foreign commerce in pursuit of United States foreign policy. *Henderson v. Mayor of New York*, 92 U.S. 543 (1876).

The United States must "speak with one voice," 423 U.S. at 285, and only the exclusive Federal control of foreign commerce can produce that result. *See Japan Line, Ltd. v. County of Los Angeles*, 441 U.S. 434 (1979); *Michelin Tire Corporation v. Wages*, 423 U.S. 276 (1976); *Washington Revenue Department v. Association of Washington Stevedoring Cos.*, 435 U.S. 734 (1978).

Your *amici* respectfully request this Court to note probable jurisdiction and review the California decision in this case.

III.

CALIFORNIA'S UNITARY METHOD OF INCOME APPORTIONMENT, APPLIED INTERNATIONALLY, INEVITABLY RESULTS IN DOUBLE TAXATION AND IMPERMISSIBLE BURDENS ON INTERNATIONAL COMMERCE IN VIOLATION OF THE DUE PROCESS AND COMMERCE CLAUSES OF THE CONSTITUTION.

Application of the California unitary method of apportionment leads to taxation of more than the actual economic gain of a unitary group in any instance where profitability[7] is higher outside the United States than inside the United States. In such circumstances, the uni-

[7] Ascertained under the "arm's length—independent entity" method and expressed as a percentage of sales, property, and payroll.

tary method of apportionment has the effect of shifting taxable income into the United States.[8] However, foreign countries do not decrease income taxable in their countries merely because a state of the United States has used the unitary method of apportionment to increase its share of taxable income. The inevitable result is double taxation of the amount of income shifted into the United States.

In *Japan Line*, this Court observed:

> In addition to answering the nexus, apportionment, and nondiscrimination questions posed in Complete Auto, a court must also inquire, first, whether the tax, notwithstanding apportionment, creates a substantial risk of international multiple taxation, and, second, whether the tax prevents the Federal Government from "speaking with one voice when regulating commercial relations with foreign governments." If a State tax contravenes either of these precepts, it is unconstitutional under the Commerce Clause.

Japan Line, Ltd. v. County of Los Angeles, 441 U.S. at 451.

Your *amici* submit that the application of the California unitary method of apportionment in the international context inevitably falls within the language quoted above. Taxing "more than one full value," *Id.* at 448, is no less repugnant to the Commerce Clause when the

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[8] This situation can be mathematically illustrated by assuming a Canadian company that has a wholly owned California subsidiary engaged in business only in California. Assume further that true economic gain of the combined group is $100 and under the independent entity arm's length approach, $90 is earned in Canada and $10 in California but that 20% on average of combined sales, property, and payroll is in California. In such circumstances, income subjected to tax in Canada would be $90 and income subjected to tax in California would be $20 for a combined taxable income of $110.

subject matter of the tax is total income than when it is tangible personal property as in *Japan Line.*

In many instances, the international operation of California's unitary method of income apportionment will result in substantially higher tax burdens for subsidiaries of foreign corporations than for their domestically owned competitors. This result denies due process.

As an example, assume two domestically owned independent manufacturers with identical California operations. If one of them is purchased by a more profitable foreign corporation with no other operations in the United States, and operations of the purchased California company remain the same, it will be burdened with higher taxes than its California competitor. The additional taxes paid will be exclusively the result of the higher profitability of its new foreign parent in another country. Its domestically owned competitor will not suffer this increased tax. In effect, the purchased company is being penalized by California for being owned by a more profitable foreign enterprise.

A second example involves a profitable foreign corporation attempting to enter the United States market and incurring significant start-up losses as a result. Notwithstanding actual economic loss in the United States, the California segments of the business will be required to pay California taxes on income that is being earned in Canada, has remained in Canada, and is not the product of the California operation. As a result, California operations are clearly being required to pay tax on income earned by a different entity outside the United States.

There are numerous other examples of events occurring outside the United States which do not affect California sales, property, or payroll in any way but never-

theless have an arbitrary effect on California taxable income. For example, a change in exchange rates, nationalization of a profitable foreign subsidiary, discovery of a new oil field, destruction of a plant or loss of a timber stand to fire, or the purchase of new profitable operations overseas all have this effect.

Many of the above examples are commonplace. The effect of the unitary method of apportionment applied internationally is to tax United States subsidiaries of more profitable foreign corporations on income that is earned by the foreign parent company, or its foreign subsidiaries, rather than by the United States subsidiary.

This Court has held that taxation of one person on the basis of the income of another person is unconstitutional. In *Hoeper v. Tax Commission of Wisconsin*, 284 U.S. 206 (1931), while determining the validity of a state income tax law that imposed combined reporting on members of a family, this Court held:

> We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income.

284 U.S. at 215.

In reality, the unitary method of apportionment, at least as applied on an international basis, results in an apportionment of taxable income to California, which in many cases is so arbitrary as to result in a denial of due process and a violation of the Commerce Clause.

Whether a result is "arbitrary" must be measured against what is possible or practical. Your *amici* take no position as to what may be practical or possible with respect to allocation of previously determined Federal taxable income between the various states of the United States. Your *amici* strongly contend, however, that the Federally adopted "arm's length—independent entity" approach for allocation of income between the United States and all foreign nations[9] achieves fewer arbitrary results than California's unitary method. The California method results in a global averaging of income in proportion to sales, property, and payroll. This method is totally insensitive to economic realities; results in obvious misallocation of income as illustrated above; ignores tax exemptions, cash grants and other incentives offered to investors by a number of foreign governments; and is further distorted by fluctuations in international currency exchange rates, which fluctuations are now substantial and frequent. The results of the California unitary method of apportionment are inconsistent with the Federal "arm's length—independent entity" approach.

The arguments advanced to support application of California's method to foreign subsidiaries of United States corporations reveal the inequities of applying that method to United States subsidiaries of foreign corporations. The primary theoretical justification for California's use of the unitary method internationally is that foreign subsidiaries of the unitary group do not adequately compensate their United States parent company for "intangible benefits" such as research and

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[9] In addition to being set out in all income tax treaties of the United States, this approach is applied to non-treaty nations also, pursuant to Section 482 of the Internal Revenue Code and regulations thereunder.

development, management expertise, know-how, financial support, and the provision of administrative services, the expense of which may be borne by the parent without corresponding payment from the subsidiary. Assuming the doubtful validity of this justification,[10] when the parent company providing the "intangible benefits" is located outside the United States, this theoretical justification should apportion more income to the foreign parent from the United States subsidiary. Nonetheless, by applying its system as it does, California imputes income to United States subsidiaries of your *amici* that are in start-up loss situations in the United States, and thereby ignores the identical arguments used in the instant California decision to justify California's unitary method of apportionment.

The injustice of California's global application of the unitary method is compounded by the fact that a corporation's presence in California subjects all foreign components of a non-American multi-national group to substantial additional expense. Foreign corporations, for example, may prepare their accounts in foreign currency rather than in dollars; may not use United States accounting conventions; and may compute taxable income in accordance with the laws of the foreign nations where they are doing business. Substantial costs and unproductive diversion of expertise unduly and harshly burden foreign multi-national groups that are subjected to the conversion of foreign operating results into United States currency in accordance with United

[10] The validity is doubtful because of the Internal Revenue Service practice of imputing income to cover such items. See, *e.g.*, Treasury Reg. § 1.482-2(c) requiring an "arm's length" charge for use of intangible property.

States accounting conventions, and recalculation of those results in accordance with United States tax principles merely because the enterprise has a minor subsidiary in California. The United States Treasury Department has also long since recognized the inherent difficulties of unitary reporting.[11]

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[11] This practice creates three types of problems: (1) It can result in a determination of income for state tax purposes which is substantially different than the income which would be attributed the corporation doing business in the state if an arm's-length or separate accounting method were used. To the extent that the relationship between the three apportionment factors (payroll, property, and sales) and the income to be apportioned differs markedly in foreign countries from the relationship which generally applies within the United States, the measurement of income by this method can result in serious distortions. In practice, the unitary apportionment system appears in comparison to an arm's-length or separate accounting method to generate substantially more taxes for the states. (2) The practice can impose a substantial administrative burden, involving annual translation of the books of what may be a substantial number of foreign corporations into U.S. accounting concepts and U.S. currency. (3) The practice has created, and continues to create, an irritant in the international relations of the United States. A number of foreign governments have complained, both officially and informally, that the unitary system differs from the arm's-length method used by the Federal Government and generally accepted in international practice.

State Taxation of Foreign Source Income: Hearing on H.R. 5076 Before the House Comm. on Ways and Means, 96th Cong., 2d Sess. 7 (1980) (Statement of Donald C. Lubick, former Assistant Secretary of Treasury for Tax Policy).

CONCLUSION

While this Court has addressed issues of unitary taxation in the domestic context, this case underscores the greater and different Constitutional issues raised by application of the unitary method internationally.

Your *amici* and their government are prohibited by the United States Constitution from effecting treaties with any of the 50 states and must, therefore, depend upon the Constitutional supremacy of the single voice with which the Federal government speaks in international affairs. Accordingly, your *amici* respectfully urge this Court to note probable jurisdiction so that this Court may decide the substantial Constitutional questions presented by the California court. Without review of this case, a California scheme of apportionment that burdens international commerce, that offends trading partners of the United States, and that imposes unconstitutional double taxation will be permitted to interfere in an area subject solely to Federal regulation.

Respectfully submitted,

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